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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,508	06/07/2001	William D. Corti	FIS920010004US1	9213

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EXAMINER

LEO, LEONARD R

ART UNIT PAPER NUMBER

3753

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,508

Applicant(s)

CORTI ET AL.

Examiner

Leonard R. Leo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12,14-18,20,22-24,27 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 1,3-10,12,14-18,20,22-24 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

The amendment filed on March 5, 2004 has been entered.

Claims 13, 21 and 28 are cancelled, claims 1, 3-10, 12, 14-18, 20, 22-24, 27 and 35 are pending, and claims 5, 7-10, 12, 14-15, 17-18, 20, 22-23 and 27 remain withdrawn.

Election/Restrictions

Newly amended claims 1, 3-4, 6, 16 and 24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. The species illustrated in Figures 2A-2E (i.e. no flat strip);
- II. The species illustrated in Figures 3A-3E (i.e. single sided flat strip); and
- III. The species illustrated in Figures 4A-4E (i.e. double sided flat strip).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 3-4, 6, 16 and 24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Haushalter (Figure 1, column 1, lines 12-26). The base plate of Haushalter is believed to be flexible.

Claim 35 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by August (Figure 3).

Claim 35 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by McCullough.

Response to Arguments

The Examiner regrets the confusion with respect to the Election of species requirement. In the Election requirement mailed on March 8, 2002, the Examiner believed there were only 5 species directed only to the shape of the corrugated element. In applicant's response filed on June 17, 2002, applicant elected the species of Figure 2B and stated claims 1, 16 and 24 read on the elected species. However, the Examiner also believed claims 2-4 and 6 also read on the elected species. In the amendment filed on November 18, 2002, the subject matter of nonelected claim 11 was amended to claim 1, nonelected claim 19 was amended to claim 16 and nonelected claim 26 was amended to claim 24. The Examiner unknowingly permitted a shift in invention and examined the amended claims, since the art of record was believed to meet the claims.

In the present amendments filed on November 21, 2003 and March 5, 2004, the subject matter of nonelected claim 13 was amended to claim 1, nonelected claim 21 was amended to claim 16, and nonelected claim 28 was amended to claim 24. The Examiner cannot permit this shift in invention, considering applicant has received an examination of an elected species, and a nonelected species by incorporating subject matter from nonelected claims. Accordingly, only claim 35 is examined.

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The rejection under 35 U.S.C. 112, first paragraph, is withdrawn. Although, the specification does not disclose the term "tape strip," the Examiner believes the term to imply merely a flat strip without adhesive thereon. There is no patentable distinction between the terms tape, strip or tape strip.

The rejection under 35 U.S.C. 112, second paragraph, is withdrawn, since the claim 3 is not being examined.

The rejection in view of Trunk is withdrawn.

No further comments are deemed necessary at this time, since claim 35 is the same as previously presented claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be

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directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648. Status of the application may also be obtained from the Internet: <http://pair.uspto.gov/cgi-bin/final/home.pl>

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.

A handwritten signature in cursive script that reads "Leonard R. Leo".

LEONARD R. LEO
PRIMARY EXAMINER
ART UNIT 3743

June 1, 2004